



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2016-0074; FRL-10021-23-Region 5]**

**Air Plan Approval; Wisconsin; Partial Approval and Partial Disapproval of the Rhinelander SO<sub>2</sub> Nonattainment Area Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is partially approving and partially disapproving a revision to the Wisconsin State Implementation Plan (SIP) intended to provide for attaining the 2010 primary, health-based 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS or "standard") for the Rhinelander SO<sub>2</sub> nonattainment area. This SIP revision (hereinafter referred to as Wisconsin's Rhinelander SO<sub>2</sub> plan or plan) includes Wisconsin's attainment demonstration and other attainment planning elements required under the Clean Air Act (CAA). EPA is approving the base year emissions inventory and affirming that the nonattainment new source review requirements for the area have been met. EPA is also approving the Ahlstrom-Munksjö facility SO<sub>2</sub> emission limit as SIP strengthening. EPA is disapproving the attainment demonstration, since the plan relies on credit for more stack height than is creditable under the regulations for good engineering practice (GEP) stack height. Additionally, EPA is disapproving the plan for failing to meet the requirements for meeting reasonable further progress (RFP)

toward attainment of the NAAQS, reasonably available control measures/reasonably available control technology (RACM/RACT), emission limitations and control measures as necessary to attain the NAAQS, and contingency measures.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0074. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Abigail Teener, Environmental Engineer, at (312) 353-7314 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,

(312) 353-7314, [teener.abigail@epa.gov](mailto:teener.abigail@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What actions did EPA propose on this SIP submission?**

On November 25, 2020,<sup>1</sup> EPA proposed to partially approve and partially disapprove Wisconsin's Rhinelander SO<sub>2</sub> plan submitted on January 22, 2016 and supplemented on July 18, 2016 and November 29, 2016. EPA proposed to approve the base year emissions inventory and to affirm that the new source review requirements for the area had previously been met.<sup>2</sup> EPA also proposed to approve the Ahlstrom-Munksjö (formerly Expera Specialty Solutions LLC (Expera)) SO<sub>2</sub> emission limit as SIP strengthening. Specifically, EPA proposed to approve Wisconsin's Administrative Order AM-15-01, including emission limits and associated compliance monitoring, recordkeeping, and reporting requirements.

At that time, EPA also proposed to disapprove the attainment demonstration. EPA's notice of proposed rulemaking provided an explanation of the provisions in the CAA and in the implementing stack height regulations that limit the stack height that is creditable for attainment planning purposes. In particular, the proposed rulemaking underscored the provisions that allow credit for stack heights above "formula GEP stack height" only if suitable control requirements are established, and only to the extent that such credit is necessary to resolve any remaining violations of the air quality standard. In

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<sup>1</sup> 85 FR 75273 (November 25, 2020).

<sup>2</sup> 79 FR 60064 (October 6, 2014).

addition, EPA proposed to disapprove the plan for failing to meet the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. EPA stated that final action to disapprove portions of the plan would start sanctions and Federal implementation plan (FIP) clocks for this area under CAA sections 179(a)-(b) and 110(c), respectively. EPA noted that the sanctions and FIP clocks would be terminated by an EPA rulemaking approving a revised plan.

## **II. What is EPA's response to comments received on the proposed rulemaking?**

The proposed action described above provided a public comment period that closed on December 28, 2020. EPA received one adverse comment letter from the Wisconsin Department of Natural Resources (Wisconsin) and one anonymous, somewhat supportive comment on the proposed action. These comments are summarized below along with EPA's responses.

*Wisconsin Comment:* Wisconsin recommends that EPA not finalize the proposed action. Wisconsin stated that they worked cooperatively with EPA on the content of Wisconsin's Rhinelander SO<sub>2</sub> plan, and that EPA Region 5 staff and Wisconsin were in agreement when Wisconsin submitted their plan in January 2016. Wisconsin also asserted that after the facility raised the stack to the GEP height specified in Wisconsin's attainment plan submittal, the monitored SO<sub>2</sub> concentrations greatly decreased and have not recorded NAAQS violations since 2018. Additionally,

Wisconsin stated that although they and the facility (Ahlstrom-Munksjö) do not agree with EPA's interpretation of the stack height regulations, they have been working closely with EPA on a submittal that would comply with the regulations. Finally, Wisconsin stated that they understand that EPA is taking this action due to a court-ordered deadline, but objected that they believe this action will create unnecessary burdens for EPA and Wisconsin and not accelerate the timeline for submitting a future plan for attaining the NAAQS, as Wisconsin plans to issue an order with a limit that complies with the EPA stack height regulations on April 1, 2021.

*Response:* At the time of Wisconsin's submittal in January 2016, EPA Region 5 staff informally shared their preliminary views regarding Wisconsin's submittal. Unfortunately, these views were not informed by a complete understanding of how Wisconsin's submittal related to section 123 of the CAA and EPA regulations at 40 CFR 51.118 and 51.100(hh)-(kk) restricting the circumstances in which increased stack height can be credited in emission limitations in SIPs. As EPA informed Wisconsin in February 2017, in the process of conducting an internal regulatory review of Wisconsin's submittal, EPA found that the plan did not meet the applicable requirements due to the reliance on a stack height above GEP stack height. Specifically, Wisconsin's plan relied on a stack height above the "formula GEP height" defined in 40 CFR 51.100(ii)(2) without meeting the control requirements in 40 CFR 51.100(ii)(3) and

(kk) (1) .

Wisconsin's comments state that Wisconsin and the company disagree with EPA's interpretation of the stack height regulations. However, since Wisconsin identified no specific objections to EPA's interpretation of these regulations as delineated in the proposed rule, EPA has no reason to reevaluate this interpretation as it applies here, and EPA continues to interpret the stack height regulations as prohibiting reliance on stack heights above formula GEP height, unless the plan also establishes control requirements specified in 40 CFR 51.100(ii) (3) and (kk) (1). EPA also notes that its interpretation has been judicially affirmed. See, *Montana Sulphur & Chemical Company v. EPA*, 666 F.3d 1174 (9<sup>th</sup> Cir. 2012).

EPA appreciates that Wisconsin has nevertheless committed to submitting an approvable plan consistent with section 123 of the CAA and EPA's stack height regulations. EPA looks forward to a future rulemaking to address that submittal. EPA also appreciates the continued discussions between EPA and Wisconsin on these issues.

EPA understands that the finalization of the proposed action will not affect the timeline of Wisconsin's planned submittal of a corrective SIP, which Wisconsin expects to submit by March 31, 2021. Nevertheless, EPA may not defer acting on Wisconsin's 2016 submittal, which the State has never withdrawn, but must instead act more promptly due to a court-ordered deadline that was established for EPA to fulfill its obligation

under section 110(k) of the CAA to complete rulemaking on this state submittal.

EPA will pursue a separate rulemaking to address a future supplemental submittal from Wisconsin. If EPA issues a rulemaking that shows that Wisconsin has met all applicable requirements, that action would terminate the sanctions and FIP clocks initiated by this action, and Wisconsin would be subject to no further planning obligations with respect to the 2010 SO<sub>2</sub> air quality standard for the Rhinelander area.

*Anonymous Comment:* The commenter supports the finalization of the proposed action. However, the commenter suggested that EPA could strengthen its justification in several ways. The commenter suggested that EPA clarify the differences between the State's and EPA's interpretation of the stack height regulations, discuss the effects of SO<sub>2</sub> on human health and the environment, and describe some specific actions the facility could take to reduce SO<sub>2</sub>.

*Response:* EPA appreciates the commenter's support in finalizing the proposed action.

The commenter appears to have identified the primary distinction between the State's and EPA's interpretation of the stack height regulation, that EPA unlike the State believes that the stack height regulations require emission control (new source performance standards or, alternatively, best available retrofit technology) as a prerequisite for any credit being granted for stack height above formula GEP height. EPA

presented an extensive description of its interpretation of these regulations in its proposed rule, and EPA believes that further discussion of how the State's views might differ is unwarranted in the absence of comments from the State specifying such distinctions in its interpretation. In any event, EPA's interpretation is well-settled, and was affirmed by the U.S. Coury of Appeals for the 9<sup>th</sup> Circuit in *Montana Sulphur & Chemical Company v. EPA*, 666 F.3d 1174 (9<sup>th</sup>. Cir. 2012).

The commenter is correct that control of SO<sub>2</sub> emissions has a number of environmental benefits; beyond avoiding the health effects that prompted the promulgation of the SO<sub>2</sub> air quality standard, SO<sub>2</sub> emission reductions also reduce the long range formation of fine particulate matter and reduce regional haze. That said, these benefits are pertinent to programs beyond the scope of this SIP action that are addressed under other authority, whereas the purpose of this action is merely to determine whether Wisconsin's plan is consistent with the CAA and with EPA's regulations governing action on attainment demonstration SIPs.

Wisconsin and the facility are well aware of control options for meeting the SO<sub>2</sub> air quality standard without reliance on a stack height above the height that is creditable under the stack height regulations. In any case, the subject of this rule is the adequacy of Wisconsin's 2016 plan, not the options for remedying the deficiencies in Wisconsin's 2016 plan. Therefore, no additional discussion of control options is necessary here.



### **III. What Action is EPA Taking?**

EPA is approving the base year emissions inventory and affirming that the new source review requirements for the area have been met. EPA is also approving Wisconsin's Administrative Order AM-15-01, containing emission limits and associated compliance monitoring, recordkeeping, and reporting requirements for Ahlstrom-Munksjö (formerly Expera), as SIP strengthening.<sup>3</sup> EPA is disapproving the attainment demonstration, as well as the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. This disapproval will start sanctions clocks for this area under CAA section 179(a)-(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as well as initiate an obligation for EPA to promulgate a FIP within 24 months under CAA section 110(c), unless in the meantime EPA has approved a plan that satisfies the requirements that EPA is finding unsatisfied.

As noted above, Wisconsin has committed to submit a supplemental submittal addressing EPA's concerns. EPA expects such a submittal to contain more stringent limits for Ahlstrom-Munksjö's Rhinelander facility, such that it may be appropriate for the prospective document containing the expected enhanced

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<sup>3</sup> EPA is approving an order issued to the facility's prior owner, Expera, but the order continues to limit emissions from the facility, which is now owned by Ahlstrom-Munksjö.

limits to replace the administrative order being approved here, with the result that the SIP, if revised by Wisconsin and approved by EPA to incorporate them, would then only include the enhanced requirements. However, any such replacement would be considered in the context of notice-and-comment rulemaking on the prospective Wisconsin submittal and is not germane here.

#### **IV. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Wisconsin's Administrative Order AM-15-01 described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action partially approves and partially disapproves state law as meeting Federal requirements

and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial

review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 15, 2021.

Cheryl Newton,  
Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c)(142) to read as follows:

**§ 52.2570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(142) On January 22, 2016, July 18, 2016, and November 29, 2016, the Wisconsin Department of Natural Resources submitted a request to revise the Wisconsin State Implementation Plan for attaining the 2010 primary, health-based 1-hour SO<sub>2</sub> national ambient air quality standard for the Rhinelander SO<sub>2</sub> nonattainment area. This submittal includes an emission inventory for this area and an administrative order for the Rhinelander facility formerly owned by Expera.

(i) *Incorporation by reference.* (A) Wisconsin Administrative Order AM-15-01, issued by the Wisconsin Department of Natural Resources on January 15, 2016, to Expera Specialty Solutions LLC for its facility located in Rhinelander, Wisconsin.

(B) [Reserved]

(ii) [Reserved]

3. Section 52.2572 is amended by adding paragraph (c) to read as follows:

**§ 52.2572 Approval status.**

\* \* \* \* \*

(c) The Administrator disapproves Wisconsin's attainment demonstration, submitted on January 22, 2016 and supplemented on July 18, 2016 and November 29, 2016, for the Rhinelander SO<sub>2</sub> nonattainment area.

[FR Doc. 2021-05754 Filed: 3/22/2021 8:45 am; Publication Date: 3/23/2021]